

Federal Communications Commission

DA 99-860

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Telecommunications Carriers' Use of)
Customer Proprietary Network)
Information and Other Customer)
Information)
)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended)

CC Docket No. 96-115 ✓

CC Docket No. 96-149

DISPATCHED

MAY 14 11 44 AM '99

FCC MAIL SECTION

ORDER

Adopted: May 7, 1999

Released: May 7, 1999

By the Deputy Chief, Common Carrier Bureau:

1. On February 26, 1998, the Commission released the *CPNI Order* in the above-captioned proceeding.¹ On April 24, 1998, the Cellular Telecommunications Industry Association (CTIA) filed a Request for Deferral and Clarification² of the *CPNI Order*. We will address the CTIA petition in a later order. On April 29, 1998, GTE Service Corporation filed a Petition for Temporary Forbearance from the *CPNI Order*.³ GTE subsequently withdrew its petition.⁴

2. On May 8, 1998, SBC Communications Inc. (SBC) filed comments in support of the CTIA and GTE petitions, as well as its own Petition for Temporary Forbearance or

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) (*CPNI Order*).

² Cellular Telecommunications Industry Association Request for Deferral and Clarification (filed 4/24/98).

³ GTE Service Corporation, et al. Petition for Temporary Forbearance or, in the Alternative, Motion for Stay (filed 4/29/98).

⁴ GTE Service Corporation Withdrawal of Petition (filed 12/2/98).

Deferral (Temporary Petition).⁵ SBC requested that the Commission forbear from applying, or defer the effective date of, section 64.2005(b)(1) of the Commission's rules in connection with the use of customer proprietary network information (CPNI) to market customer premises equipment (CPE) and information services for CMRS providers. SBC also requested that the Commission temporarily forbear from applying, or defer the effective date of, the following rules: (1) section 64.2005(b)(1) in connection with the provision of wireline voice mail services, caller ID, call waiting, and ADSL services; and (2) section 64.2005(b)(3) relating to use of CPNI for "winback" purposes.⁶ Finally, SBC requested that the Commission clarify that the *CPNI Order* and the Commission's rules do not apply to "retention" efforts,⁷ or in the alternative, temporarily forbear from applying, or defer their effective date to the extent that the Commission applies them to retention efforts.

3. On June 25, 1998, SBC filed an Alternative Petition for Forbearance (Alternative Petition).⁸ In its Alternative Petition, SBC argues that the Commission should reconsider and rescind, or forbear from applying, section 64.2005(b)(1) with respect to CMRS providers. SBC also argues that the Commission should reconsider and rescind, or forbear from applying, section 64.2005(b)(1) with respect to wireline CPE and voice mail-related services.⁹

4. The issues raised in the SBC petitions and SBC's views on these issues have been raised in other petitions for reconsideration and forbearance of the *CPNI Order* and, for the reasons discussed below, we will consider them in that context.¹⁰ Moreover, SBC's

⁵ Comments of SBC Communications Inc. in Support of the Petition for Temporary Forbearance or Stay of GTE Service Corporation, and the Request for Deferral and Clarification of Cellular Telecommunications Industry Association; and Petition for Temporary Forbearance or Deferral of SBC Communications Inc. (filed 5/8/98).

⁶ As defined by section 64.2005(b)(3) of the Commission's rules, "winback" is the use by a carrier of a former customer's CPNI in an effort to regain the business of that customer.

⁷ SBC defines "retention" efforts as the use of CPNI "to 'retain' customers prior to the point at which they have terminated the service relationship with their original carrier." Temporary Petition at 24.

⁸ Comments of SBC Communications Inc. on Petitions for Reconsideration of the CPNI Order, and Alternative Petition for Forbearance of SBC Communications Inc. (filed June 28, 1998). On May 26, 1998, SBC filed a Petition for Reconsideration of the *CPNI Order*. Our actions in the instant order in no way prejudices our consideration of SBC's Petition for Reconsideration.

⁹ SBC asks that its Temporary Petition be incorporated into its Alternative Petition "as if fully restated." Alternative Petition at 2.

¹⁰ See, e.g., Petition of Bell Atlantic for Partial Reconsideration and Forbearance (filed May 26, 1998); Petition of Ameritech for Reconsideration or, in the Alternative, for Forbearance or Clarification (filed May 26, 1998); Petition for Forbearance of the Personal Communications Industry Association (filed June 29, 1998); GTE Petition for Forbearance, Reconsideration and/or Clarification (filed May 26, 1998).

petitions are so fatally flawed procedurally that it would not be productive for the Commission to address the petitions here. The fundamental procedural flaw is that SBC is seeking forbearance but has not adequately raised the forbearance requests in accordance with section 10 of the Communications Act.¹¹ Specifically, in its Temporary Petition, SBC fails to explain why section 10 of the Communications Act requires the Commission to temporarily forbear from applying the effective date of the above-referenced rule sections. Also, in its Alternative Petition, SBC fails to explain why section 10 requires the Commission to forbear from applying section 64.2005(b)(1) to CMRS providers or with respect to wireline CPE and voice mail-related services. We therefore conclude that we have insufficient information on which to determine whether the three-prong test for the grant of forbearance under section 10 is satisfied for either petition and we will deny the petitions. However, we will treat both petitions as comments when we consider the other petitions for reconsideration and forbearance of the *CPNI Order*.

5. Accordingly, IT IS ORDERED, pursuant to Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and authority delegated under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. § § 0.91 and 0.291, that the Petition for Temporary Forbearance or Deferral filed by SBC Communications Inc., and the Alternative Petition for Forbearance file by SBC Communications Inc, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Robert C. Atkinson
Deputy Chief
Common Carrier Bureau

¹¹ 47 U.S.C. Section 160.